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THE PRESIDENT'S ANNUAL ADDRESS: THE LIFE AND SERVICES OF ORAN MILO ROBERTS.¹

DUDLEY G. WOOTEN.

Notwithstanding the multitude of those who, in a country like this, rise to comparative eminence among their fellow-men, and enjoy a measure of popular renown during their lives, there are very few who really achieve enduring distinction, or leave behind them such evidences of practical usefulness in having lived and labored, as to make them

“On Fame’s eternal bead-roll worthy to be filed.”

Among the number of those in Texas who have attained this exceptional station was the venerable jurist, statesman, and patriot

¹The late Oran M. Roberts, the first President of the Association, died at his home at Austin, May 19, 1898. His death devolved the Presidency upon the First Vice-President, Mr. Wooten, who appropriately chose to deliver the Annual Address upon the life and services of the distinguished statesman, jurist, and historian, whose labors contributed so largely to the foundation and successful inauguration of the work of the Texas State Historical Association. The Address was delivered on June 16, 1898.

whose recent death has irreparably bereaved this Association, and in commemoration of whose virtues and services it has been deemed appropriate that I, his unworthy successor, should today briefly speak.

No more delicate and difficult office can devolve upon a speaker than to truthfully, yet fitly, pronounce proper words of memorial and eulogy upon one lately dead—especially if that one was both a public character and a personal friend. There is danger that such an address may rise to the pitch of extravagant laudation, or sink to the level of private panegyric. When it does either, it fails to serve the purpose of a true encomium and loses the value of a practical lesson. Every life whose services are worthy of public recital and remark has been a contribution to the history of the land and people in which its labors were wrought, and every attempt to describe and discuss such a life should in some degree answer the purposes of historical truth and subserve the interests of that philosophy of living which History is said to teach by example. These desirable attributes of a memorial address are thus outlined rather by way of introduction, than as prophetic of what I shall endeavor to say in the inadequate sketch of our late President and his life-work in the upbuilding of the State that reveres his memory and mourns his loss.

Oran Milo Roberts was a native of South Carolina, and although no appreciable portion of his life was spent there, the distinctive social and political influences of that State's historical attitude on all the current questions of his era were plainly visible in his private and public career. He was reared to manhood and began his active labors in the State of Alabama, where his early training as a lawyer and in the fundamental principles of constitutional government was very thorough and essentially practical. It was the period of incipient division between the North and South upon the great questions that later arrayed them in actual hostility. The leaders of Southern thought were marshaling their forces of logic and protest on the side of the strict construction, States-rights theory of the Federal Constitution, and the first sounds of that memorable conflict that afterwards thrilled the country with eloquence and argument and shook the continent with the roar of battle, were just beginning to challenge the attention and excite the alarm of conservative and observant men. Young Roberts

was taught in that school of stoic statesmanship that never sacrificed a theory of political science to an advantage of commercial enterprise, and preferred the principles of the Constitution above the temporary seductions of industrial prosperity. How loyal he remained to the ideals of his youth was attested in the Secession Convention of 1861, on the field of battle, in his masterly discussions of Federal questions, and in the writings and lectures of his later years.

Having fairly entered upon the practice of the law and served a term in the Legislature, at the age of twenty-six he came to the Republic of Texas. It was the darkest and most discouraging moment in the history of the new government. President Lamar's disastrous administration was just closing, bankruptcy and ruin stared the Republic in the face, Indian wars and domestic poverty had almost disheartened the people, and the menace of Mexican invasion filled the future with gloom and foreboding. And yet the men who had redeemed this land from tyranny and established its freedom on the foundations of constitutional order, were equal to the task of preserving and perpetuating what they had won. Whatever may be said of their successors in field and forum and in the paths of peaceful industry, the leaders and workers in Texas in that period from 1836 to 1846 have had no superiors in all the proud and potent prosperity of later years. Their practical good sense, their unfading faith in the ultimate success of the government, their broad and generous estimate of the things necessary to a nation's happiness and growth, their loyalty to the traditional virtues and institutions of their race, their wonderful acuteness and discernment in establishing the laws and policies of the Republic and State upon the highest and safest plane of patriotic wisdom, were something marvelous, considering the circumstances and conditions of the time. A recent reading of the debates and journals of the Constitutional Convention of 1845 leads me to affirm without hesitation that the proceedings of that body displayed a depth of devotion to fundamental truth, in political philosophy, a practical appreciation of the essential features of a free government, and a liberality of policy in dealing with the problems of popular institutions, that are not surpassed in the reported deliberations of any similar body ever assembled on this hemisphere.

It was into this "goodly fellowship" of brave and thoughtful pioneers, lawyers, and statesmen that the young Alabama attorney and legislator came in 1841. His immediate success and sustained prominence among such men are the most conclusive proof of his ability, attainments, and personal worth. Accident will not account for such events, nor does adventitious circumstance supply a life-long support in the paths of public service and distinction. He settled at San Augustine, then the seat of civilization in Eastern Texas, and the center of that circle of skillful lawyers and strong men of whom Rusk and Henderson and Jennings and Ochiltree and K. L. Anderson were chiefs. The third year after his arrival in Texas, President Houston appointed him district attorney of that district, it being the Fifth Judicial District of the Republic. It is to be noticed that his first appearance in the reported decisions of the Supreme Court was as attorney for Sam Houston, in a case reported in the first volume of the "Reports." It was an early tradition of the East Texas bar that Roberts was an exceptionally good prosecutor, not by the arts of oratory, but by his skill in the management of his cases and his shrewd judgment in the selection of his juries. That his service was satisfactory is demonstrated by the fact that when the State government was organized in 1846, Governor Henderson, who lived and practiced law with him in the same district, appointed him one of the district judges, assigning him to the old Fifth District, where he had won his fame as prosecutor.

As constituted under the Republic, the judicial department consisted of the Supreme Court, district courts, and inferior courts, such as county and justices' courts. There could not be less than three nor more than eight judicial districts, with a judge in each, and these sitting *in banc*. with the Chief Justice composed the Supreme Court. This arrangement, together with the law that required the district judges to alternate or exchange in holding their courts, gave to these tribunals a wide, varied, and controlling influence in the formation and development of our early jurisprudence, required a high order of ability in the judges themselves, and promoted a readiness and versatility of judicial talent and attainment, that made the bench of those days illustrious for its learning and character. Under the State government, inaugurated in 1846, the Supreme Court was created as a separate tribunal

composed of three judges, appointed by the Governor and holding office for six years; and there were at first eight district courts, the presiding judges of which were also appointed by the Governor for six years. An amendment to the Constitution in 1850 made all judicial and most of the State officers elective. The first judges appointed for the several districts, in 1846, were James Love, William Jones, R. E. B. Baylor, M. P. Norton, O. M. Roberts, William B. Ochiltree, John B. Jones, and John T. Mills. All of these had been district judges under the Republic except Love and Roberts. Although they no longer constituted part of the Supreme Court, the habits and influence of the system formerly existing continued to lend great efficiency and skill to the administration of justice by these courts; and by reason of the large territory covered by each district, the variety and novelty of the questions constantly arising for settlement, and the self-reliance, original thought, and profound discretion demanded and inspired by the situation, the district bench was highly respected and was a powerful factor in laying the foundations of our judicial fabric.

The Supreme Court was then composed of that triumvirate of legal worthies—the *dei majores* of Texan jurisprudence—Hemphill, Wheeler, and Lipscomb; but it is not too much to say that their labors in moulding the marvelous composite of the Civil and the Common Law, with its new features of marital and homestead rights, and its incomparable system of pleading and practice without technical forms of action or distinctions between law and equity, were vastly aided and enlightened by the intelligence, zeal and industry of the early district judges. The decisions of the Supreme Court under the Republic had been few and desultory, their reported cases were imperfectly presented, precedents for the anomalous questions that arose were scarce and inadequate, and the work of both bench and bar was arduous and trying in the extreme.

Judge Roberts was located in the oldest and most populous section of the State, the bar of his district was the largest and admittedly the ablest in Texas, and the character of litigation tried before him was correspondingly complicated and difficult; so that his experience was laborious and varied, his capacity for administration and decision was taxed to the utmost, and his successful discharge of his duties was so well attested that it led to his pro-

motion at the first opportunity that presented itself to the people and the profession.

Had he served out his full term as judge he would have occupied that position until 1852, but he resigned in 1851, after five years' service, and returned to the practice of the law, settling in Shelby county. Although then and always pre-eminently a lawyer and a judge, his practical bent of mind and his intense interest in the great questions of constitutional controversy in the domain of politics enlisted his active participation in public discussions and political movements.

Speedily after her annexation to the Union, Texas began to feel the compelling force of her new relations and the responsibilities they entailed. The Democratic party had brought her into the sisterhood of States, and to that historic organization she gave her earliest, as she has maintained her lasting allegiance. Annexation, in fact, precipitated the issues that afterwards rent the country in twain and convulsed it in civil strife. The "boundary dispute," adjusted by the compromise measures of 1850, reopened the vexed controversy of free and slave territory by practically abrogating the Missouri Compromise of 1820. It is strange what remote influences sway the destinies of nations, and how far it is to reach the genesis of revolution. When Napoleon sold Louisiana to the United States in 1803, his attention was called by his minister, the Count de Marbois, to the fact that its southern and western limits were not definitely described in the cession; to which the First Consul, with characteristic prevision, replied that "if an obscurity did not already exist, *it would be good policy to put one in the treaty.*" That obscurity remained to vex France, Spain and the United States through years of filibustering along the Sabine; it ran red with blood in the expeditions of Magee and Long; it was partially removed by the treaty of 1819 with Spain; it arose in another form in the Mexican War of 1846; its prolific progeny of contention roused the Union to fever heat in the campaign for Annexation and in the debates of Congress over the Compromise of 1850; its voice reverberated in the strife of 1861; and at last its expiring echoes were heard in the Greer County Case in 1896.

During the years from 1847 to 1857 Texas politics were rapidly developing along the lines of the pro-slavery, States-rights doc-

trines, and all the leading men of the State arrayed themselves upon the paramount issues that were beginning to alarm the South for her liberties and her life. Judge Roberts, true to his South Carolina parentage and his Alabama training, was a staunch and formidable advocate of the strict construction of the Federal Constitution, the reserved rights of the States, and the inviolable sanctity of their domestic institutions. In 1853 he was a candidate for the Democratic nomination for Congress in the Eastern district, his opponent being William C. Young, of Red River county. For two days of balloting he came within a few votes of two-thirds of the convention, when George W. Smith was nominated as a compromise candidate. In the exciting State campaign of 1855, when the "American" or "Know-nothing" party made its struggle for supremacy in Texas, in alliance with so-called "Union Democrats," he took an active part in opposition to that movement, in company with such men as Pinckney Henderson, Frank Bowden, Malcolm D. Graham, Louis T. Wigfall, John H. Reagan, George W. Chilton, and M. D. Ector.

In the fall of 1856, Abner S. Lipscomb, associate justice of the Supreme Court, died, and an election to fill the vacancy thus created was held in the following February. The leading candidates were Peter W. Gray, Thomas J. Jennings, Benjamin C. Franklin, John Taylor, and Oran M. Roberts. These gentlemen were not urged or nominated by any political organization, but were put forward by the bar and the people in the localities where they lived. It was a very close race between Judges Gray and Roberts, the latter being elected by only one hundred votes over his leading opponent. Judge Roberts at once assumed his place on the Supreme bench, and there he first exhibited that marvelous capacity for analysis, discussion of facts, and the complete evisceration of a case—body, bones, and tissue—that have made his decisions such lasting monuments of judicial learning and practical utility.

On November 9, 1857, Judge John Hemphill, the Chief Justice of the court, was elected to the United States Senate, creating another vacancy. It was the universal desire that Judge Wheeler, who was already an associate justice since the organization of the court, should succeed to the chief-justiceship, but he was averse to being a candidate before a political convention, by which method

it was now for the first time proposed to nominate the judges. The matter was at last adjusted by Judge Roberts introducing a resolution into the convention, which was unanimously adopted, declaring Judge Wheeler to be the choice of the bar and people for the first place on the bench, and Judge Constantine Buckley was nominated for associate justice. But James H. Bell ran against the nominee and was elected, thus composing the court of Wheeler, Roberts, and Bell.

It would be impossible here and now to discuss the great work done for Texas jurisprudence by Judge Roberts' service on the highest court of the State. In all he was a member of the court nearly fifteen years, being Chief Justice during seven years of that time. His marked traits as an appellate judge were his implacable hostility to judicial legislation—to judge-made law, his absolute impartiality, his practical knowledge of almost every subject of inquiry that came before him, his philosophic devotion to principles rather than precedents, his boldness in adhering to a right line of decisions or in departing from a wrong one, his tireless industry in the study of details, and finally, the simplicity, clearness, logical conclusiveness and the *completeness* of his treatment and disposition of a case. When you read one of his decisions you will have read all there is to know about the law and facts involved. He decided the case and all there was in it. There was no blind groping after authorities to support the conclusions arrived at, but the fundamental principle at issue was first sought after, apprehended, stated, applied, and then enforced with plain and practical directness. He went to the sources and springs of the law as they gush forth bold and pure from the fountains of English and American jurisprudence, instead of seeking their wasted stream in the little devious, dirty, and trickling rills of isolated and conflicting decisions by a multitude of courts and a minimum of judicial wisdom. When he had written an opinion in a case, there was no doubt or difficulty in understanding just what had been done or was required to be done in order to dispose of it. If the judgment of the lower court was affirmed, the whole law of the case was discussed, the essential rulings of the trial judge were examined and approved, or, if erroneous but not material, the errors were pointed out as a warning and instruction for the future. If the judgment was reversed and the cause remanded, every vital issue of the law

involved was completely and clearly defined, the difficulties and errors of the whole record were examined and dissipated, and when the case came on for a second trial below there was no room for hesitation, controversy, or confusion as to what the Supreme Court had declared to be the law of the case, and *the whole case*.

It may be said that these qualities were characteristic of all the early judges of our highest court. For the first thirty-five or forty years of its history it was the crowning virtue of that tribunal that it *decided* causes, decided them *on principle*, decided them *on lines of logical consistency*, and decided them *completely and finally*.

It was the peculiar distinction of Judge Roberts not only to have excelled in this direction, but to have largely contributed while on the bench to the bringing about of these results. When he first came into the court, in 1857, there had never been an open dissent of opinion by any of the judges. No doubt they had often differed among themselves as to the correct decision of cases and the disposition of certain questions, but no one of the court had ever filed and published his dissent, supported by a discussion of the points at issue. It was, therefore not a welcome announcement to his colleagues when Judge Roberts gave notice that he felt constrained to inaugurate the practice. It seems that he had previously disagreed with his brethren upon some decision already made, but forebore to publicly announce his opposing views, telling them, however, that in future he would reserve the right to deliver a dissenting opinion in all cases where he deemed the questions of sufficient importance to warrant his open protest against the action of the majority of the court. The occasion for this first arose in the case of *Cain vs. the State*, reported in Volume 20 of the Texas Reports, involving the question of the construction of statutes passed at the same session of the legislature. Judge Wheeler, speaking for himself and Chief Justice Hemphill, decided according to the old English rule by which all acts of Parliament, being part of the same *roll*, should be construed together as one act and of the date of the first day of the session. Judge Roberts opposed this view, as not in consonance with the methods of American legislation, and not consistent with the later rules of construction even in England. His dissenting opinion is unquestionably the law as it is now recognized by the great weight of authority. There is one singular feature about this case, which

may have been noticed by those who have read it. The opinion delivered by the majority of the court appears to be a direct reply to the argument of the dissenting opinion of Judge Roberts, which is accounted for by the fact that Roberts wrote and filed his *dissent* before the main opinion was composed by Judge Wheeler, who had it before him when he prepared his opinion. This I learned from Governor Roberts himself.

Another influential and salutary innovation introduced by him into the methods of the Supreme Court, was that of requiring all written opinions to be submitted to the full bench before being handed down as the decision of the court. This rule he inaugurated when he became the Chief Justice in 1864, although he had contended for it when he was associate justice. It will be remembered that one of the strongest criticisms Thomas Jefferson leveled at the Supreme Court of the United States was that, in his day, the opinions of that tribunal were the individual utterances of the several judges and not the concurrent conclusions of the whole court, arrived at after full discussion and ratification by all the justices. There are often many things in a judicial opinion that are not necessary to be decided or conceded in order to support the judgment announced. As is frequently remarked "the decision is all right, but the reasoning is all wrong." These *dicta* from the bench simply confuse the course of judicial conduct, mislead the bar, and often become absolutely harmful in the administration of the law. Hence, the necessity for a thorough discussion and complete acquiescence by the whole court, not only on the decision arrived at, but on the several stages and steps of argument by which it is reached, before it is proclaimed to the world as the authoritative judgment of the bench. In establishing these two rules in the deliberations of the Supreme Court of Texas—the right and duty of dissent in proper cases, and the approval by the whole court of all opinions handed down—Judge Roberts contributed vastly to the authority, strength, and harmonious efficiency of that body.

It is useless here to attempt to recite the valuable expositions of the law which are contained in his many opinions from the highest tribunal of the State. His first reported decision is in the case of *Hart vs. Weatherford*, 19 Texas Reports, 57, and the last was in the case of *Overton vs. Terry*, 49 Texas Reports, 773, the latter being a

dissenting opinion in regard to practice on writ of error in the Supreme Court. The first of these cases was decided in 1857, and the last in 1878. Between these two dates lies a vast and vital period of judicial development and legal learning, to the annals of which his deep thought and indefatigable industry contributed nobly and permanently. We may simply notice as milestones on the way of his labor and zeal, the exposition of the "rule in Shelley's case"¹—that *pons asinorum* of technical lawyers—which has been accepted and followed by very many able courts; his masterly analysis of the law of legal *malice*, and the distinction between the degrees of murder,² which has become a world-wide authority; his explanation of the scope and meaning of the law of eminent domain;³ his splendid discussion of the functions and application of *mandamus* in the control of a State officer;⁴ his last great opinion in the case of *Guilford vs. Love*,⁵ covering the whole realm of probate law, and the process of administration under a will in Texas; and last, but not least, his system of rules for practice and pleading in the courts of Texas, which has remained the code of Texas practice in the trial of causes in this State, and is approved by the experience of both bench and bar.

After his elevation to the Supreme bench, events rapidly culminated in conditions that for the time suspended the calm and cloistered deliberations of the court and the consultation room. The new court, with Wheeler at its head, and Roberts and Bell as his associates, was hardly seated before the sounds of approaching tumult and disunion shook alike bench, bar, and populace. The campaign of 1857, between Houston and Runnels, for Governor, had been one of unprecedented vigor and acrimony, resulting in the defeat of General Houston by a large majority. Meanwhile, the continued aggressions of the abolition faction in the North, the open defiance of the Statutes of the United States, in the violation of the fugitive slave law, the violent denunciation of the Supreme Court for its decision in the *Dred Scott case*, the increasing

¹*Hancock vs. Butler*, 21 Texas, 804.

²*McCoy vs. State*, 25 Texas, 33.

³22 Texas, 504.

⁴40 Texas, 647.

⁵49 Texas, 715.

bitterness and boldness of unconstitutional methods in Congress, and throughout the whole northern section of the Union, with corresponding alarm, agitation and counter-aggressiveness in the South, brought matters to the last limit of peaceful discussion, and prepared the country for warlike measures. The fatal mistake of the Democratic leaders in Texas, aided by his own magnificent and masterful personality, enabled General Houston, in the campaign of 1859, to reverse the popular verdict of two years before, and he was elected governor, as the representative of the Union Democrats and the *quasi-Republican* element in this State. He was a Texan and loved Texas with a consuming devotion; but he had been a lover of the Union first; he had learned his lesson of fidelity from Andrew Jackson, with whom loyalty to the Union approached fanaticism; he had labored long and ably to place the Lone Star on the field of the flag of his youth, and he longed with heroic hope to behold it still blazing there as his old age tottered to the grave. Therefore, he set his face like flint against Secession and all its belongings. But there were other men, equally as patriotic and loyal to the Union, as the fathers framed it, who saw the inevitable, and prepared to meet it firmly and bravely, and back of all were the people—Southern to the core, and ready to do battle for the institutions of their domestic fabric and for the constitutional autonomy of their State.

In this period of approaching revolution, Austin was the seat of the greatest activity, and, strange to say, the sedate and conservative circle of the Supreme Court was the storm center. Chief Justice Wheeler was singularly sensitive to any suggestion of judicial impropriety, and was violently opposed to political utterances by any member of the court. But those were times when men forgot, or relegated to disuse, the ordinary restraints of custom. The disruption of the Democratic party at Baltimore and Charleston, and the election of Abraham Lincoln on a platform avowedly hostile to the South, had demonstrated the nearness of actual disunion. At a great Union meeting in Austin, in November, 1860, calls were made upon the judges of the Supreme Court for an expression of opinion on the pending crisis, and Judge Bell announced that he would speak in Representative Hall one week from that date. He was known to be an ardent Union man, an accomplished orator, and a profound lawyer. Judge Roberts at once

proclaimed that he would reply at the same time and place. The speaking took place, and it was typical of the earnestness and vigor of men's convictions at that stirring period. A few extracts from Judge Roberts' address may serve to show the directness and fervor of his method of dealing with the subject. He said, in conclusion: "What shall Texas do? As one of her citizens, I am for State action—action by the constituted authorities of the State—action singly and conjointly with other Southern States, until we are made secure in our rights, liberties, and honors. Our allegiance is due to both the State and Federal governments, because the sovereign power of Texas, at the time of our annexation to the general government, so ordained it. And until the same sovereign power shall be brought into action, and declares a different will, it is our duty, as citizens, to make ourselves subservient to the one as well as the other. * * * In all these stages of State action, too great solicitude can not be felt by all parties, to preserve the social order; so that, if the Federal government should fail to recognize the right of the State to exercise its reserved power of changing its form of government, and should endeavor to subjugate it, the energies of the people may be united to repel invasion. Which one of these remedies may be adopted is for the people to say, when they shall have found the means of expressing their will. It is my purpose now to show that the present attitude of public affairs justifies them in adopting either of the remedies that they may think necessary for their safety. I have no fear that inconsiderate rashness will control them. They have pondered upon the issues of this crisis long and well. They have made up their minds. There is no agrarian spirit abroad in this country. There is no war of classes. There is no conflict between labor and capital. Our people are not seeking or asking to extort favors from the government to themselves, or to deprive others of any right. They have no desire for a social rupture at home. Their excitement arises from an entirely opposite cause—a high resolve now to throw themselves in the breach; not to destroy, but to protect rights; not to destroy property, but to protect property; not to destroy life, but to make life worth having; not to produce discord, but to end it. This excitement is not a shallow, noisy ripple, but a deep, irresistible current, springing from the firmest convictions of the mind."

That debate was the turning point in public action in Texas. It was exhaustive, eloquent, patriotic, and, by reason of the character and station of the debaters, it was decisive. The Secession advocates determined to act promptly and vigorously, and Judge Roberts assumed and held the leading part in all that followed. He drew up the call for a convention of the people, assisted in conducting the campaign for that purpose, was chosen president of the convention, and in the delicate and difficult tactics required to out-general Governor Houston, his shrewdness, firmness, and political sagacity were eminently exhibited. It is a fact not generally known, that he might have been one of the delegates to the Provisional Government of the Confederate States, at Montgomery, Ala., and no doubt a member or senator in the permanent government; but he declined, saying that it would require no small effort to counteract Governor Houston's powerful opposition at home, and that he preferred that task. How he managed the maneuver and achieved his purpose, is one of the most curious and thrilling episodes in the political history of the State.

An incident in connection with the Convention of 1861 illustrates his democratic spirit and his high sense of liberality and justice. In the Constitution of the Republic of Texas, copied into that of the State of 1845, it was provided that "no minister of the gospel or priest of any denomination whatever" should be eligible to the office of chief executive of the government or to membership in the legislative body. When the Convention of 1861 came to revise the State Constitution for the purpose of entering the Confederate States, Judge Roberts, the President of the body, suggested that the discrimination against preachers be stricken out, which was done.

When war was finally inaugurated and had proceeded to a stage demanding the utmost resources of the South, Judge Roberts, in 1862, resigned his seat on the bench, raised a regiment himself (the Eleventh Texas Infantry), and led it to the battlefields of the Confederacy. It is gratifying to know that the last regular work he ever did was to write a history of the operations and services of the Texas troops in the armies of the Civil War, which is now in press, as part of a series of such histories covering the whole field of Southern military service during that period.

In 1864, while still in the army, he was elected Chief Justice of the Supreme Court, and the war being manifestly near its close, he came home and assumed once more the judicial station. This interval of warlike experience is made the occasion for a sarcastic reference by George W. Paschal, Reporter of the Supreme Court, and a violent Union partisan, in the preface to Volume 28 of the Texas Reports, where it is said: "The Chief Justice and one of the judges upon the bench, whose constitutional views had hitherto been reliable, entered heartily into the secession movement. The position of one of them (Oran M. Roberts) and the political tendency of his mind made him a zealous leader. Indeed, he became the president of the secession convention, and the chairman of the committee of public safety. In this he but followed his early training and the school to which he had attached himself. Perhaps it was due to his acts (for inconsistency has no boundaries) to meet the full consequences of his political leadership. At any rate, he doffed the judicial robes and girded on a broad-sword. He went forth to the battlefield. Whether or not he won military laurels equal to his judicial record, it is needless to say. Suffice it, that he returned to the Chief Justiceship of the court in 1864." The same spirit of petty spite and rancor led the same reporter to omit to publish a number of very important decisions rendered by the court during the period of the war.

It may be remarked in this connection that at the time Secession was agitated and accomplished very many of the ablest public men in Texas were staunch Union men, especially among the early leaders and in the Southern section of the State. These men naturally antagonized Judge Roberts in his active and prominent part in the Secession movement; and it is a fact that whatever disparagement or want of appreciation his great abilities and public service have at any time or in any degree sustained—and it has not been appreciable—has emanated from that class of traditional critics and jaundiced opponents.

When the State government was organized under the methods of presidential reconstruction, in 1866, he was elected United States Senator, defeating B. H. Epperson, and his colleague was the venerable David G. Burnet, ex-president of the provisional government of the Republic in 1836, who defeated John Hancock. The senators and representatives from Texas went to Washington

and remained there several months, seeking admission to their seats in Congress, but in vain. Texas was the last of the Southern States to be reconstructed according to President Johnson's plans, and by the time she sought recognition at Washington the radical Republicans, led by Wade, Sumner, Stevens, Grow, and Colfax, were determined to inaugurate a system of military reconstruction under Congressional control. While the Texas delegation were waiting to be accepted, Senator Roberts drew up an "Address to the People of the United States," which was signed by the delegation and published in the *National Intelligencer*, attracting wide and favorable attention at Washington and throughout the country. It was the only paper of the kind promulgated by any Southern State, and as an impartial statement of facts, with a profound exposition of the constitutional rights and attitude of the lately seceded States, it produced a marked impression in official circles.

When the State government was overthrown by military order, in 1867, our people submitted to the horrors of congressional reconstruction for the Biblical period of probation, and ex-Judge, ex-Senator Roberts retired to private life. He at once began the practice of law, which was of course precarious under existing conditions, and conducted a small law school at Gilmer. This quiet and uneventful period of his life was in many ways the most pleasant, as it was certainly a very useful part of his career. He taught the principles of the science he loved and thoroughly understood to a select class of earnest, ambitious youths, whose subsequent success they always justly ascribed to his tutorship and influence. Some of them have risen to great distinction in law and politics. One was a Supreme Judge, one was attorney general, another became United States Senator, and they have all been men of worth, weight, and usefulness in life.

After seven years of sacrificial suffering at the hands of "carpet-bag" and "scalawag" rule, Texas finally secured a restoration of her constitutional sovereignty as a State in the Union, in 1874, and her leading sons resumed their headship of affairs. Under the Constitution of 1869, the judges of the Supreme Court were five in number and appointed by the Governor to hold for nine years. But in order to get rid of the famous (or infamous) "semicolon court" appointed by Governor Davis in 1870, a constitutional

amendment was adopted at the State election in 1873, by which a new court was required to be appointed, still composed of five judges and holding for nine years. Governor Coke, on taking his seat in 1874, appointed O. M. Roberts Chief Justice, and Judges Moore, Reeves, Devine, and Ballinger associate justices. Judge Ballinger resigned in a few days and Judge Devine a year later, Peter W. Gray and John Ireland being appointed to succeed them. Under the Constitution of 1876, the court was again made elective, the judges reduced to three, and the term of office to six years. Under this Roberts was elected Chief Justice, and Moore and Gould associates. Judge Roberts remained Chief Justice until the memorable State Democratic Convention of 1878, when Throckmorton, Hubbard, and Lang "locked" the convention for a week, rendering a compromise imperative. A "commission" or conference committee of thirty-two members was selected to choose a candidate for Governor, and they named O. M. Roberts, then absent at his home in Tyler. He accepted and was elected at the ensuing election, and was re-elected in 1880.

In entering upon his service as the highest executive officer of the State, his equipment was not exactly such as ordinarily insures success and satisfaction. Lawyers and judges are not usually efficient business men in any line. Still less are they generally careful financiers or practical administrators of affairs. But in these respects Governor Roberts proved himself an exceptional success. He was from the start a shrewd political economist, a sagacious statesman in the department of governmental finances, and a broad, liberal manager of every interest of public concern committed to his care and encouragement. He was fond of calling attention to the fact that the secret of satisfactory executive service in the management of a government consists in the correct solution of the financial problem. He often emphasized the point that the Premier of England is usually the first lord of the treasury, and that in the United States the secretary of the treasury has come to be the most important officer in the Cabinet. On these lines he shaped his policy and practice, announced the motto, "Pay as you go," and through good and evil report adhered to his plans of rigid economy, provident taxation, liberal but exact appropriations to public purposes, and the utilization of every source of legitimate revenue and every inducement towards building up the State's population, in-

telligence and wealth. He was fortunate, in that his two administrations fell on peaceful and prosperous times. The details of the multifarious interests that were fostered by his management would stretch beyond the limits of an address like this. The chief results of his labors as Governor were the contract for building the new granite capitol, by which the State disposed of unmarketable lands in exchange for a superb public edifice valued at a million and half dollars; the complete reorganization of the whole educational system, including the inauguration of the State University, the foundation of an efficient system of normal colleges, and the thorough reformation of our free public schools; the radical improvement of our prison establishments, with the erection of an additional penitentiary; the building of another insane asylum, and the extension of all the institutions of public charity; a land policy by which, for the first time, the unsalable school lands of the West were put on the market and actual settlement by private ownership was promoted; and a general financial policy under which, at the end of his second term, the public debt had been reduced \$1,400,000, taxes lowered from fifty to thirty cents on the one hundred dollars, taxable values raised from \$280,000,000 to \$410,000,000, the permanent school fund increased from \$1,629,000 to \$5,361,000, and there was a cash balance in the treasury, to the account of general revenue, of over two million dollars.

These figures and facts speak for themselves. Although Governor Roberts was an old-fashioned Democrat, with many strong and pragmatical notions upon social and political questions, it was a distinguishing trait of his public views and conduct that he accepted existing conditions and accommodated his official acts to the progressive spirit of the age and country in which he lived. He was not an ideologist nor a *doctrinaire*. Neither did he belong to the age of ox-carts, or alarm himself with needless fears that "foreigners would some day elbow our children into the sea." He was a plain, practical, provident, business-like governor, whose judicial learning strengthened and adorned his political sagacity.

On his retirement from the executive chair in 1883, he was shortly elected Professor of Law in the State University, which position he held until 1892. It is needless to speak of his labors in these halls. They are reflected in the proficient training, and attested by the enduring gratitude of hundreds of aspiring young

men all over Texas, who will continue to revere him as "philosopher, friend, and guide."

He resigned his professorship to retire to a quiet repose and a scholarly review of his long and active life, residing first at Marble Falls, and later at Austin. His last years were as honorably and beneficially bestowed as any of those that went before. He did what so few of our great men have the thoughtful patriotism and the conscientious industry to perform—he collected the memorials of his fifty years of public service, revised the recollections of the many and momentous scenes in which he had mingled, verified the facts of the annals of his past career, and wrote for posterity, "The Legislative, Political, and Judicial History of Texas, from 1845 to 1895"—a work that is a monument of patience, patriotism, historical accuracy, and exhaustive presentation of the whole story of Texan Statehood for the first half century of its development. It forms the first part of Volume 2 of "The Comprehensive History of Texas," recently published, and when its merits are generally known, it will be regarded as indispensable to the completeness of every educated Texan's library. His latest work, as I have said, was his history of the Texas troops in the Civil War, not yet published.

One singular and striking feature of Governor Roberts' mental composition, was his fondness for scientific and philosophical studies. In the intervals of his busy professional and official life, he wrote a great many interesting and valuable articles upon such subjects. He was a remarkably observant man, noting with reflective intelligence the minutest details of the social and physical world around him, and drawing therefrom many curious and instructive ideas and theories.

Contemplating his whole life and services, I do not hesitate to declare that in all the departments of public, professional, and private labor, he was the most versatile and the most useful man Texas has produced in the fifty years of her existence as an American State. Others were pre-eminent in this or that direction; he was great and useful in all. As lawyer, jurist, statesman, soldier, teacher, and historian, the "Old Alcalde" has no rival in the annals of Texan worthies.

It has been said that "genius can mould no marble so speaking as the spot where a brave man stood or the scene where he labored." We stand today on the spot where he was wont to take his place

among those who lived and labored for this great commonwealth and its permanent happiness. All around us are the scenes in which he wrought out the manifold purposes of a life devoted to the lofty ideals of jurisprudence, statecraft, and education. On yonder hill, the splendid fabric and colossal beauty of a capitol, reared by his provident and practical care, enshrines the memories of his patriotism and typifies the enduring usefulness of his career. In these walls we may hear even yet the echoes of his footsteps and recall the sound of his voice, raised so often in behalf of youth, and its noblest aspirations. These physical and tangible monuments, and memorials of his great mind and heart, bring welcome messages of his well-spent days; but the abiding tribute to his fame and influence is written in the table of laws he illumined by his learning, in the institutions of social life perfected by his patient skill, in the grateful remembrance of the people he served so faithfully and loved so well, and in the splendid prowess of the State whose grandeur was the dream of his youth, the purpose of his manhood, and the pride of his old age.